Editor's note: Appealed -- Civ.No. 89-0057J (D.Wyo. Dec. 20, 1989), aff'd, No. 90-8025 (10th Cir. Jan. 15, 1991), 923 F.2d 774; petition for cert, sub nom. Trapper Mining, Inc. v. Lujan, No. 90-1940 (S.Ct. June 18, 1991); denied (Oct. 7, 1991), 112 S.Ct. 81

WYODAK RESOURCES DEVELOPMENT CORP.

IBLA 87-586 Decided January 12, 1989

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, to readjust coal lease W-073289.

Affirmed.

1. Estoppel--Federal Employees and Officers: Authority to Bind Government

   The application of the doctrine of equitable estoppel against the Federal Government is justified only if doing so does not interfere with underlying Government policies or unduly undermine the correct enforcement of a particular law or regulation.

2. Coal Leases and Permits: Leases--Coal Leases and Permits: Readjustment

   The 20-year readjustment interval stated in coal leases issued prior to enactment of the Federal Coal Leasing Amendments Act of Aug. 4, 1976, 30 U.S.C. || 201, 209 (1982), was converted to a 10-year readjustment interval by that Act. Although a failure to provide timely notice of readjustment at the end of a 20-year period is treated as a Departmental waiver of its right to impose new or additional terms and conditions, this waiver does not extend to the period between readjustments set by the Act, and a lease may be readjusted at the end of the next 10-year readjustment period.

APPEARANCES: Timothy L. Thomas, Esq., Rapid City, South Dakota, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Wyodak Resources Development Corporation (Wyodak) has appealed from a May 29, 1987, decision of the Wyoming State Office, Bureau of Land Management (BLM) dismissing Wyodak's protest of BLM's notice that Federal coal lease W-073289 would be subject to readjustment on May 1, 1989, pursuant to 43 CFR 3451.

Coal lease W-073289 was issued effective May 1, 1959, to Wyodak pursuant to section 7 of the Mineral Leasing Act (MLA) of 1920, 30 U.S.C. | 207 (1952). 1/ Section 3.(d) of lease W-037289 provides

> [t]he right reasonably to readjust and fix royalties payable hereunder and other terms and conditions at the end of 20 years from the date hereof and thereafter at the end of each suc- ceeding 20-year period during the continuance of this lease unless otherwise provided by law at the time of expiration of any such period. Unless the lessee files objections to the proposed terms or a relinquishment of the lease within 30 days after receipt of the notice of proposed terms for a 20 year period, he will be deemed to have agreed to such terms.

In 1976, the Federal Coal Leasing Amendments Act (FCLAA), 30 U.S.C. || 201-209 (1982), was enacted, imposing new and additional conditions upon subsequently issued Federal coal leases. These conditions were also imposed upon pre-FCLAA leases, effective the date of readjustment of those leases.

On February 7, 1983, the Wyoming State Office, BLM, sent a letter to Wyodak, notifying Wyodak that the right of readjustment of the terms and conditions of lease W-073289 had been waived by BLM. The letter stated:

> Federal coal lease W-073289, issued May 1, 1959, was sub- ject to readjustment of terms and conditions on May 1, 1979. On February 7, 1979, we notified you of our intention to readjust. The readjusted terms and conditions were never forwarded to your company.
>
> Regulations in effect on May 1, 1979 (43 CFR 3451.1(d)(2)) state:
>
> "In any notification that a lease will be readjusted under this subsection, the authorized officer shall pre- scribe when the notice of readjusted lease terms shall be transmitted to the lessee. This time shall be as soon as possible after notice that the lease shall be readjusted, but shall not be longer than 2 years after such notice. Failure to transmit the notice of read- justed lease terms in the specified period shall constitute a waiver of the right to readjust, unless the delay is caused by events beyond the control of the Department."
>
> In light of these regulations and the fact that we did not forward terms and conditions to you before May 1, 1981, we view that readjustment has been waived. The terms and conditions of the lease remain the same as those in the original lease. Lease W-073289 shall be subject to readjustment again on May 1, 1999.

1/ The lease contains 320 acres in T. 50 N., R. 71 W., sixth principal meridian, Campbell County, Wyoming.

By decision of April 27, 1987, BLM notified appellant that lease W-073289 was again subject to readjustment pursuant to the provision of 43 CFR 3451, and that a decision containing the readjusted terms and conditions would be forwarded to Wyodak on or before May 1, 1989. The decision also stated:

> [The] lease's terms and conditions were ripe for readjustment on May 1, 1979. However, prior to the end of the first 20-year period, this office failed to inform the lessee of record, Wyodak Resources Development Corporation, that the lease terms and conditions would be readjusted, thereby causing the government to waive readjustment of this lease until the end of the next readjustment period set by regulation, May 1, 1989.

On May 26, 1987, appellant filed a protest to BLM's notice of intent to readjust the lease terms as of May 1, 1989, asserting that its lease was not subject to readjustment until May 1, 1999. The basis for this objection is the February 7, 1983, letter quoted above.

The May 29, 1987, BLM decision was then issued. BLM stated that its decision of February 7, 1983, which set the next readjustment date at May 1, 1999, was in error and denied the Wyodak protest. BLM found that, under FCLAA requirements, a lease issued prior to the enactment of FCLAA is sub-ject to readjustment at the end of its primary 20-year term and at the end of each subsequent 10-year period. BLM stated that Wyodak's lease was therefore ripe for readjustment on May 1, 1989.

Wyodak has sought review of that May 29, 1987, decision, contending that BLM is estopped from readjusting the terms of its lease until May 1, 1999. Relying on the Tenth Circuit Court of Appeals decision in Rosebud Coal Sales Co. v. Andrus, 667 F.2d 949 (10th Cir. 1982), appellant asserts that the Government's right to readjust its lease is in the nature of an option, and that BLM chose not to exercise that option in 1979. Wyodak further contends that under the authority of Rosebud, and by reason of the statements made in the February 7, 1983, letter, BLM waived its right to readjust the terms of appellant's lease in 1989.

Appellant states its opinion that, assuming FCLAA gave BLM the right to readjust the lease terms on May 1, 1989, in the February 7, 1983, letter BLM specifically waived its option to readjust in 1989. Wyodak contends: "BLM as the optionee under the option contract has manifested an assent to discharge its right to readjust the terms of the lease in 1989, if it has that right." Appellant further contends that BLM's promise to forego read-justment of lease terms until May 1, 1999, is binding on BLM because Wyodak relied on the BLM promise when it entered into business arrangements and long term contracts based on the understanding that the terms of the lease, including the royalty amount, would remain unchanged until May 1, 1999.

Appellant also argues that BLM has failed to follow its own rulings and interpretations. Appellant contends:

> The BLM waived its right to readjust as of May 1, 1979 as set forth in the February 7, 1983 letter by failure to comply with the regulations in force at the time. Therefore the "current 20 year period" referred to is that 20 year period from May 1, 1979 to May 1, 1999, as, by failing to timely readjust in May of 1979, the 20 year period provided for under the original lease was renewed for another 20 years.

Appellant concludes by arguing that once BLM has made an interpretation of its own regulations it is then bound by that interpretation, which cannot be capriciously repudiated.

[1] The primary issue on appeal is whether BLM is now barred from readjusting the terms and conditions of Wyodak's coal lease by the statement that the lease will not be readjusted until 1999. Appellant argues that BLM is equitably estopped from imposing new terms and conditions effective May 1, 1989.

The doctrine of equitable estoppel is designed to protect the legitimate expectations of parties who have relied upon the conduct of another to their own detriment. Russell v. Texas, 238 F.2d 636, 640 (9th Cir. 1956), cert. denied, 354 U.S. 938 (1956). As we noted in Jeffery Ranches, Inc. v. BLM, 102 IBLA 379 (1988), the Board will recognize estoppel against the Government in appropriate circumstances. However, estoppel does not lie where the effect of such action would be to grant an individual a right not authorized by law. See Raymond T. Duncan, 96 IBLA 352 (1987); Edward L. Ellis, 42 IBLA 66 (1979).

In Utah Power & Light Co. v. United States, 243 U.S. 389 (1917), the Supreme Court held: "The United States is neither bound nor estopped by acts of its officers or agents in entering into an arrangement or agree- ment to do or cause to be done what the law does not sanction or permit." Id. at 408-09. See also Federal Crop Ins. Corp. v. Merrill, 332 U.S. 380 (1947). Subsequent to the decision in Utah Power & Light the all encom- passing doctrine quoted above has been somewhat eroded by subsequent decisions. However, the doctrine is applied with much reluctance and only in cases where to invoke equitable estoppel would "not interfere with the underlying Government policies or unduly undermine the correct enforcement of a partic- ular law or regulation." United States v. Browning, 630 F.2d 694, 702 (10th Cir. 1980).

At the time the lease was issued, section 7 of MLA of 1920, provided:

> Leases shall be for indeterminate periods upon condition * * * that at the end of each twenty-year period succeeding the date of the lease such readjustment of terms and conditions may be made as the Secretary of the Interior may determine, unless otherwise provided by law at the time of the expiration of such periods.

In 1976, section 7 of MLA was amended by section 6 of FCLAA, 30 U.S.C. | 207(a) (1982), to read in pertinent part:

> A coal lease shall be for a term of twenty years and for so long thereafter as coal is produced annually in commercial quantities from that lease. * * * The lease shall include such other terms and conditions as the Secretary shall determine. Such rentals and royalties and other terms and conditions of the lease will be subject to readjustment at the end of its primary term of twenty years and at the end of each ten-year period thereafter if the lease is extended. [Emphasis added.]

Thus, prior to the enactment of FCLAA, Federal coal leases were issued for an indeterminate duration subject to 20-year readjustment intervals. FCLAA amended the Mineral Leasing Act to provide the leases would issue with 20-year primary terms subject to readjustment at the end of that term and at the end of each subsequent 10-year period.

In Franklin Real Estate Co., 93 IBLA 272 (1986), a case which presented similar facts, the Board considered the meaning of "next appropriate period" as it related to pre-FCLAA leases when BLM had waived readjustment after the expiration of the 20-year period in effect when FCLAA was passed, and stated:

> In our analysis we look first to the language of FCLAA, but it provides no guidance concerning the readjustment period for pre-FCLAA leases. Next, we turn to the legislative history of that Act. There we find the remarks of Representative Patsy T. Mink, Chairman of the Subcommittee on Mines and Mining of the House Committee on Interior and Insular Affairs, who stated:
>
> > In summary, Mr. Chairman, let me emphasize that the provisions of H.R. 6721 are intended to correct the inadequacies of present law which permit the speculative holding of leases and provide a poor return to the public. The 533 existing Federal leases would be unaffected by the bill except to the extent its provisions are made applicable upon the periodic ten year readjustment of lease terms, or upon the inclusion of an existing lease in a logical mining unit.
>
> 122 Cong. Rec. 489 (1976). This statement is a clear expression of Congressional intent that pre-FCLAA leases be subjected to the periodic 10-year readjustment of lease terms. [Emphasis added.]

Id. at 278-79.

On October 15, 1976, the Department issued proposed rulemaking. See 41 FR 45573. The proposed rules addressed the readjustment period as follows:

> (6) 43 CFR 3522.2-1 is amended to read as follows:
>
> | 3522.2-1 Terms and conditions.

* * * * * * *

> (b) Coal. All coal leases will be subject to readjustment at the end of the first 20-year period following the issuance of the lease and at the end of each ten-year period thereafter.

This proposed regulation did not distinguish between pre-FCLAA and post- FCLAA leases, or recognize that some coal leases had been issued more than 20 years prior to enactment of FCLAA. The regulation was adopted without change or comment. See 41 FR 56646 (Dec. 29, 1976).

More comprehensive coal lease readjustments regulations were subse-quently proposed. See 44 FR 16800 (Mar. 19, 1979). The proposed language of 43 CFR 3451.1(a) provided that:

> All leases issued prior to August 4, 1976, shall be subject to readjustment at the end of the current 20-year period and at the end of each 10-year period thereafter. All leases issued after August 4, 1976, shall be subject to readjustment at the end of the first 20-year period and each 10-year period thereafter, if the lease is extended.

44 FR 16832 (Mar. 19, 1979). The language of 43 CFR 3451.1(a)(1) was subsequently adopted as initially proposed. 44 FR 42635 (July 19, 1979). The Department specifically provided that all leases issued prior to August 4, 1976 (pre-FCLAA leases), would be subject to readjustment at the end of the "current 20-year period and at the end of each 10-year period thereafter." 43 CFR 3451.1(a)(1). This regulation, which was in effect when the February 7, 1983, letter was sent to Wyodak, clearly reflected congressional intent.

In Emery Mining Corp. v. Secretary of Labor, 744 F.2d 1411, 1416 (10th Cir. 1984), the court stated that application of the doctrine of equitable estoppel is justified only where "it does not interfere with underlying Government policies or unduly undermine the correct enforce- ment of a particular law or regulation." The judicial (and quasi-judicial) process should not invoke the doctrine of estoppel if doing so would under-mine the purpose of a statute expressing the will of Congress. Chi Li v. INS, 749 F.2d 1469 (10th Cir. 1984).

The statement in the February 7, 1983, BLM letter to Wyodak that the readjustment period would not again arise until 1999 was contrary to the intent of Congress when enacting FCLAA and the regulations in effect at the time the letter was sent. In effect, the statement was in error. To now state that BLM is estopped from considering readjustment would frustrate the intent of Congress when enacting FCLAA and undermine the provisions of 43 CFR 3451.1(a). Therefore, we find it inappropriate to invoke estoppel against BLM in this case.

[2] The next issue to be considered is whether Federal coal lease W-073289, which was not readjusted by BLM on May 1, 1979, the end of its initial 20-year period, is again subject to readjustment on May 1, 1989.

The Board has held that the failure to provide notice of readjustment prior to the end of the 20-year lease term constitutes a waiver of the right to readjust. Franklin Real Estate Co., supra; Kaiser Steel Corp., 63 IBLA 363 (1982). The Board has also stated, however, that waiver of the right to readjust relates only to the readjustment period in question, and the Department may readjust the lease at the "next appropriate period" in accordance with procedural guides then in existence. Franklin Real Estate Co., supra at 278; Consolidation Coal Co., 87 IBLA 296, 303 (1985).

Appellant argues that it was in its second 20-year period when it was notified of readjustment, and, therefore, its "current" 20-year period does not expire until May 1, 1999. We construe the applicable regulations to be consistent with the express congressional intent that pre-FCLAA leases converted to 10-year readjustment periods. When the Department published the regulations in 1979, it assumed that all pre-FCLAA leases whose 20-year terms had expired after August 4, 1976, would be subject to readjustment. At the time of passage of FCLAA, W-073289 was in its first 20-year period. When the period expired on May 1, 1979, W-073289 automatically converted to a 10-year readjustment schedule. Although the readjustment of the terms and conditions were waived, BLM was entitled to readjust appellant's lease at the expiration of the 10-year adjustment period upon timely notice.

Appellant has requested a hearing, but has raised no issues of material fact. A hearing is not necessary in the absence of a material issue of fact, which, if proven, would alter the disposition of this appeal. See Stickelman v. United States, 563 F.2d 413, 417 (9th Cir. 1971). Therefore, we deny appellant's request for a hearing.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge